

NTSB Order No. EA-5233

Issued under delegated authority (49 C.F.R. 800.24)
on the 22nd day of June, 2006

Docket SE-17518

(a) Appeal brief....each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

his decision on April 17, 2006. Accordingly, respondent's appeal brief was due by May 17, 2006. However, respondent did not file his appeal brief until 19 days later, on June 5, 2006. In response to the Administrator's motion to dismiss his appeal, respondent's counsel asserts that this lateness was due to a "clerical error" but does not explain what that error was. Further, he argues that the Administrator was not prejudiced by the lateness. And, finally, he contends that we have excused similar lateness in prior cases.

In the absence of good cause to excuse a failure to file a timely notice of appeal, or to file a timely appeal brief or extension request, dismissal of an appeal is required by Board precedent and policy. See Administrator v. Hooper, 6 NTSB 559 (1988). His bald assertion of "clerical error" without more does not demonstrate good cause for his failure. Nor does his assertion that the Administrator was not prejudiced constitute good cause. In any event, we do not evaluate untimely filings under a prejudice standard; rather, we uniformly apply a good cause standard. Finally, the two cases respondent cites are not similar to this case in that they did not involve untimely filings; instead, they involved documents that were timely filed but simply addressed to the wrong office at the Board.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. Respondent's appeal is dismissed.

Gary L. Halbert
General Counsel